

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
FEBRUARY 8, 2005 – 6:30 p.m.
13125 SW Hall Boulevard, Tigard, Oregon

Mayor Dirksen called the meeting to order at 6:30 p.m.

Council Present: Mayor Dirksen; Councilors Harding (arrived at 6:34 p.m.), Sherwood, Wilson, and Woodruff

- STUDY SESSION

- > ADMINISTRATIVE ITEMS – The following items were distributed or discussed briefly:
 - a. Mayor's Agenda distributed.
 - b. Noted League of Oregon Cities training for newly elected officials scheduled for Portland on March 3, 9 a.m. to 3:30 p.m. (Information distributed in the 2/4/05 Council Newsletter). If interested in attending, contact Joanne Bengtson.
 - c. Dan Murphy, Tigard Chamber of Commerce Representative, is unable to attend this evening. He hopes a Chamber member will come in his place to update the Council on upcoming Chamber events.
 - d. Discuss when to schedule meetings with Representative Galizio and Senator Burdick. One suggestion was for May; another was to schedule time on the March 29 5th Tuesday Council Meeting. Last Legislative session, legislators were invited to the first business meeting each month. Representative Galizio has contacted the City and asked whether the City of Tigard would sponsor a town meeting. After discussion, consensus of Council was to invite Representative Galizio and Senator Burdick to the 5th Tuesday meeting on March 29, 2005. The Council would like to use this time as an opportunity to tell the legislators what the Council thinks is important and what they should be working toward. Interim City Manager Prosser said he would find out if the 5th Tuesday meeting could be televised.
 - e. JPACT Nomination – Beaverton Mayor Drake's letter was sent to Council on February 4; nominations are due by 2/18. Council supported the nomination of Mayor Rob Drake as the primary JPACT representative. No alternate was selected.

At this point in the meeting the Council heard information from City Attorney Ramis on Land Use Basics (see "CITY COUNCIL ORIENTATION" section below).

- f. Tualatin Resolution – Interim City Manager referred to a resolution distributed to the Council from the City of Tualatin addressing some Metro issues. The Mayor requested staff to review this Tualatin resolution and craft a resolution that would generally support Tualatin's position and also present issues specific to Tigard. A copy of a draft resolution was distributed to the City Council representing staff's attempt to respond to the Mayor's request. Mr. Prosser asked the Council to review the draft ordinance and advise him of any comments or edits by the end of the week. A proposed resolution will be presented to the Council at its February 22 Council meeting.

Council agreed to review the resolution. The Mayor urged the Council to compare the draft resolution to the original resolution from Tualatin to determine if Tigard's issues are addressed.

- g. TPOA Arbitration – Interim City Manager referred to an arbitration session held in November. Under the timelines of state law governing binding arbitration, a decision from the arbitrator was due January 10. The California arbitrator lost a home in recent landslides; therefore, both TPOA and the City contacted him and said, given the circumstances, he did not need to meet the January 10 deadline. Mr. Prosser said that Councilor Woodruff had heard that the City's labor attorney, Ken Bemis, would not join with TPOA to write a letter to the arbitrator, but this is not the case. Each side (TPOA and City Management) is sensitive to the arbitrator's recent tragedy.

Councilor Woodruff advised he had a call from TPOA President Glen Scruggs about another matter. Mr. Scruggs said he thought there was hesitation on the City's part and suggested there be a joint letter issue. Councilor Woodruff told Mr. Scruggs he would ask about sending out a joint letter. Mr. Prosser said Mr. Bemis and TPOA's lawyer would get together to issue a letter.

Councilor Wilson said he would appreciate a "Labor Negotiations 101" type of class for Council members to understand more about labor law and how the law affects public sector employees as compared to private sector employees. He also mentioned he'd like to know about civil service protections. Mr. Prosser agreed such training would be timely as there will be issues coming up for Council to deal with. Mr. Prosser will schedule this training with Attorney Ken Bemis for the Council. In response to a question from

Councilor Wilson about civil service protections, Mr. Prosser advised that the City of Tigard does not have a civil service system "per se," but it would be worthwhile to discuss civil service and the City's employment structure.

- h. NW Medical Teams – Interim City Manager Prosser advised that Councilor Woodruff had indicated he was interested in inviting NW Medical Teams to a Council session to recognize this organization for the incredible work they have been doing in SE Asia. Staff has contacted NW Medical teams, but has not heard back from them.
- i. CIP Tour – is scheduled. February 28. 3-5 PM
- j. Calendar Review
 - February 15: Council Workshop Meeting – 6:30 p.m. – Town Hall
 - February 21: President's Day Holiday – City Hall Closed, Library Open
 - February 22: Council Business Meeting – 6:30 p.m. – Town Hall
 - March 8: Council Business Meeting – 6:30 p.m. – Town Hall
 - March 15: Council Workshop Meeting – 6:30 p.m. – Town Hall
 - March 22: Council Business Meeting – 6:30 p.m. – Town Hall
 - March 29: 5th Tuesday Council Meeting – 7 p.m. – Water Auditorium

At this point in the meeting, Council went into Executive Session as noted below.

> CITY COUNCIL ORIENTATION

City Attorney Ramis reviewed an outline with Council on "Land Use Basics." A copy of this outline is on file in the City Recorder's office. Information reviewed included:

- o Quasi-Judicial and Legislative Distinguished
- o Legislative Decisions
- o Quasi-Judicial Decisions
- o Findings and Conditions
- o Due Process
- o Ethics in Land Use Cases

At the conclusion of the discussion on this agenda item, Council returned to its review of the Administrative Items (starting with "f. Tualatin Resolution").

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 7:02 p.m. to discuss employment of a public officer, real property transaction, pending litigation, and to review & evaluate the employment-related performance of the chief executive officer under ORS 192.660(2)(a)(e)(h) & (i).

Executive Session concluded at 7:33 p.m.

1. BUSINESS MEETING

- 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 7:39 p.m.
- 1.2 Council Present: Mayor Dirksen, Councilors Harding, Sherwood, Wilson, and Woodruff
- 1.3 Pledge of Allegiance: Cub Scout Pack 232 conducted a Flag Ceremony.
- 1.4 Council Communications & Liaison Reports: None
- 1.5 Call to Council and Staff for Non-Agenda Items: None

2. CITIZEN COMMUNICATION

- Tigard High School Student Envoy Nikki Pham presented Council with information on current and future activities at Tigard High School. An outline of these activities is on file in the City Recorder's office.
- Gretchen Buehner, 13249 SW 136th Place, Tigard, Oregon, said she talked to City staff about installing a stop sign at the corner of Hillshire where Westridge and 135th come together, where she has seen a lot of near and actual accidents. She said she received notice that a stop sign would be installed by the end of the week and she thanked the City.
- Follow-up to Previous Citizen Communication
 - Interim City Manager noted in January, CPO 4B President Holly Shumway requested Tigard staff attendance at her organization's meetings. CPO 4B is part of the County structure. Staff will be talking with Council in April about communications and suggests this request be considered at that time. In the meantime, staff recommends that if the County requests City staff to attend, then City staff would attend.
 - Interim City Manager Prosser noted that Brian Wegener of the Tualatin Riverkeepers presented issues to Council at a previous meeting about storm drainage. Staff is reviewing this information.

Rob Williams, Tigard Youth Forum President, reviewed the Consent Agenda as follows:

3. CONSENT AGENDA:

- 3.1 Approve Council Minutes for January 11, 2005
- 3.2 Receive and File:
 - a. Council Calendar
 - b. Tentative Agenda
 - c. 5th Tuesday – Council Meeting Notes for November 30, 2004
- 3.3 Authorize Submittal of the City of Tigard's Third-Year Title 7 Functional Plan Compliance Report – Resolution No. 05-06

A RESOLUTION AUTHORIZING THE SUBMITTAL TO METRO OF THE CITY'S THIRD YEAR TITLE 7, AFFORDABLE HOUSING, COMPLIANCE REPORT

- 3.4 Local Contract Review Board:
 - a. Award Contract for the Construction of FY 2004-05 Storm Drainage Major Maintenance Program
 - b. Authorize the Purchase of New Police Portable Radios Using a State of Oregon Price Agreement
- 3.5 Reappoint Bob Rohlf to the Washington County Consolidated Communications Agency Budget Committee – Resolution No. 05-07

A RESOLUTION TO REAPPOINT BOB ROHLF TO THE WASHINGTON COUNTY CONSOLIDATED COMMUNICATIONS AGENCY BUDGET COMMITTEE

- 3.6 Approve Separation Agreement for William A. Monahan

Motion by Councilor Sherwood, seconded by Councilor Woodruff, to approve the Consent Agenda as presented.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

4. ADOPT 2005 COUNCIL GOALS

Mayor Dirksen summarized the goals. A list of the goals is on file with the City Recorder.

The Mayor noted the Council decided to set goals in a different manner for 2005. Instead of listing long-term goals in many different areas, the Council focused on specific tasks they would like to see accomplished this year. The decision to change was largely based on information received by Council from a citizen surveys (by the Park and Recreation Board) and from the citizens' visioning process. The Council would like to commit the City's resources to addressing some individual issues of concern. Overlaying specific actions taken in each of the goal areas is a commitment to:

- Seek community involvement
- Tie actions to the Vision Task Force Goals
- Enhance the appearance of the City
- Measure results

The Mayor reviewed each goal:

1. Revitalize Downtown

This is a continuance of an effort for the last couple of years. He noted the continuing efforts of a citizen task force. In 2005, the Council is committed to completing the Downtown Plan and to implement the plan. The City might use urban renewal for that implementation; part of the plan is to study different ways to finance the projects identified to revitalize the downtown area. Once the Downtown Plan is completed and there is a process in place to implement it, the City can identify specific projects that could be done immediately.

2. Improve 99W

When the City asks citizens about what they think the biggest problem is in Tigard, they often respond, "traffic...and, specifically, Traffic on 99W." Mayor Dirksen noted that 99W is not a City street, but just because that is so, it does not mean that there are not things that the City could do. Therefore, the City's task for this year is to identify some specific projects that the City could do to alleviate congestion on 99W. Once the City has determined the appropriate projects and the projects are prioritized, the City will actively seek funding. The City could use what funding it has available to attempt to leverage additional funding from other revenue sources from the State and Federal governments.

The Mayor noted that traffic is not the only thing wrong with 99W; "it's also its appearance." The Council would like to explore ways to enhance the appearance of 99W as well.

3. Address Growth

The Mayor advised that the Council is committed to beginning a revision of Tigard's Comprehensive Plan. He said the Comprehensive Plan is a document the City uses as a road map to determine the needs of the city; i.e., where types of building should be located, consider impacts to streets, what should streets look like, what is the zoning, and what should density be in different areas. The Comprehensive Plan as it now exists was adopted about 20 years ago. While the Plan has been updated regularly, it has not been reviewed in its entirety and revised in a comprehensive manner. The process will begin with establishment of a citizen review and involvement process.

The Mayor said the City hears from citizens that some of the issues they have are issues for which the Council has no jurisdiction. The Council identified some Metro issues and determined that this year the City should discuss with Metro and the State ways that the Metro Charter could be changed to address concerns citizens have relating to zoning and density.

The Mayor noted one of the objectives under this goal is to identify and acquire open space. He referred to the parks system development charge which was recently increased and this year, the City will aggressively seek pieces of property the City to purchase for park development or reserve as open space.

The next objective under this goal is to review growth of expenditures and revenue. At times, expenses grow faster than revenue as a result of inflation (for example, increased fuel and insurance costs). The Council will review the growth of expenditures and try to determine areas where adjustments can be made.

The last objective under this goal is the graphic identity (branding) for the City of Tigard. The Council is looking for some ideas for signage, including monument signs as you enter the City. Also, the entrances to parks could be better identified with signs or gates. The City will also review the City logo with citizen and professional input.

The Mayor advised that last year the Council set six goals and each of those goals had four or five tasks for a total of 37 tasks that staff was asked to address. He said that a lot of progress could not be made in all of these tasks because of limited City resources. The Council, therefore, made the choice this year to reduce the number of goals and to limit the focus so significant progress could be made in a few areas.

The Mayor asked for citizen comments about the approach to the goal setting this year.

The Mayor noted there will be open houses for a dialogue with the community on the Downtown Plan over the next couple of months. He asked that citizens look at the Plan and let the City know what they think. He advised there is a meeting Task Force meeting on Thursday.

Councilor Woodruff said that all of the goals contain objectives or tasks that can be measured. The Council will be holding staff responsible to work towards getting these accomplished or moved in the right directions and the Council expects that the public will hold the Council accountable to move the goals in the right direction this year. Councilor Woodruff said, "We certainly do solicit any help and ideas that people have about how we can make these things happen...so we can be successful with these goals by the time we get to the end of this year."

5. RECOGNITION OF CENTREX

Risk Manager Mills presented this agenda item and introduced Jim Severson, President of Centrex Construction, Inc. and Doug Mead, the project superintendent for the remodel of the Permit Center and City Hall.

An outline of the highlights of Ms. Mills' presentation to the Council is on file in the City Recorder's office.

Ms. Mills reviewed the outstanding work of Centrex, Inc., a Tigard-based contractor who completed the remodel on the Permit Center and City Hall.

Motion by Councilor Sherwood, seconded by Councilor Wilson, to adopt Resolution No. 05-08.

RESOLUTION NO. 05-08 – A RESOLUTION RECOGNIZING CENTREX CONSTRUCTION, INC. FOR THEIR CONTRIBUTIONS TO THE CITY OF TIGARD CITIZENS.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

6. PUBLIC WORKS DEPARTMENT: MISSION/VALUES EXERCISE RESULTS

Public Works Director Koellermeier presented the staff report on this agenda item. An outline of the highlights of Public Works Director Koellermeier's presentation to the Council is on file in the City Recorder's office. Mr. Koellermeier reviewed the Mission Values/Exercise Results started in the summer of 2004. The results of these group discussions are a new Mission Statement, slogan, and a set of core values for the public works department:

Mission Statement: "The Public Works Department proudly provides stewardship over the City's water, sanitary sewer, storm drainage, streets, fleet, buildings, and parks services in a safe, efficient, courteous and professional manner."

Slogan: "Taking Care of the Community"

Core Values:

- Professionalism
- Respect
- Integrity
- Dedication
- Enthusiasm

Council members agreed that this was a good effort by the Public Works Department.

7. PUBLIC HEARING (QUASI-JUDICIAL) – PUBLIC SEWER EASEMENT VACATIONS (VAC 2004-00002) SW FREWING STREET AT SW PACIFIC HIGHWAY AND SW PFAFFLE STREET AT SW 79TH AVENUE

Mayor Dirksen opened the public hearing.

Community Development Director Hendryx introduced this agenda item. Associate Planner Tracy presented the staff report, which outlined the application to initiate two separate public utility easement vacations.

There were no declarations or challenges.

No one signed in on the testimony sign-in sheets to testify. City Attorney Ramis asked the public in attendance if anyone was present to testify on this item. Hearing no response, City Attorney Ramis advised the Council could proceed with the hearing without a detailed reading of the hearing process for a quasi-judicial hearing.

Mayor Dirksen closed the public hearing.

Council Consideration: Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adopt Ordinance No. 05-03.

ORDINANCE NO. 05-03 – AN ORDINANCE CONCERNING THE VACATION OF A PUBLIC SEWER UTILITY EASEMENT OF APPROXIMATELY 1,248 SQUARE FEET LOCATED AT SW FREWING STREET AT SW PACIFIC HIGHWAY, IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2004-00002).

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

Motion by Councilor Wilson, seconded by Councilor Harding, to adopt Ordinance No. 05-04.

ORDINANCE NO. 05-04 – AN ORDINANCE CONCERNING THE VACATION OF A PUBLIC SEWER UTILITY EASEMENT OF APPROXIMATELY 475 SQUARE FEET LOCATED AT SW PFAFFLE STREET AT SW 79TH AVENUE, IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2004-00002).

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

8. PUBLIC HEARING (QUASI-JUDICIAL) ASH CREEK ESTATES – LAND USE BOARD OF APPEALS (LUBA) REMAND - SUBDIVISION (SUB) 2003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ ZONE CHANGE (ZON) 2003-00003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ADJUSTMENT (VAR) 2003-00036/ADJUSTMENT (VAR) 2003-00037

Mayor Dirksen read the following:

ITEM ON REMAND: The State Land Use Board of Appeals (LUBA) has remanded City Council's approval of a 29-lot Planned Development Subdivision on 9.3 acres and associated Zone Change, Sensitive Lands, and Adjustment reviews for additional findings to support their decision. This hearing is limited to the four specific assignments of error which are generally: 1) The City's acceptance of lower "K" values in relation to the proposed vertical sag on SW 74th and demonstration that the City Engineer is authorized to approve such deviations to adopted street standards; 2) The requirement that the applicant prepare and submit a tree plan that identifies the size, species, and location of trees on the site, provide a removal plan, protection plan, and mitigation program in accordance with Tigard Community Development Code (TCDC) Chapter 18.790; 3) Revised findings are required for the proposed curb tight sidewalks on SW 74th Avenue and also for the cul-de-sac standards to address the relevant criteria of TCDC Chapter 18.370.C.11; and 4) Additional findings related to the landscape protection criteria of TCDC Chapter 18.745.030.E. A full copy of LUBA's Final Opinion and Order can be obtained from City Hall at cost, or is also available online at <http://luba.state.or.us/pdf/2004/aug04/03194.htm>.

LOCATION: 9750 SW 74th Avenue; WCTM 1S125DC, Tax Lots 300 and 400. **ZONE:** R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. **APPLICABLE REVIEW CRITERIA:** Tigard Community Development Code Chapters 18.370, 18.745, 18.790 and 18.810.

- a. Mayor Dirksen opened the public hearing.
- b. Statement by City Attorney – City Attorney Ramis read a statement, which he noted is read at the beginning a land use hearing in order to provide some instruction about the procedures to be followed in a land use case. If during testimony, anyone has a question about process or procedure, he asked that the question be directed to the Mayor and either the Mayor or City Attorney will try to assist and answer the question. The statement included instruction on:
 - Any person may offer relevant oral and/or written testimony. Oral testimony may be offered only by a person who has been asked to speak by the Mayor. Please make sure testimony is relevant to applicable standards for the item in question.
 - Tonight's hearing is confined to the four issues identified by the Land Use Board of Appeals, which the Mayor read in the earlier statement.

- The Council's role in this hearing is to make a land use decision applying the existing laws of the City of Tigard City. The Council cannot change the law with a land use application now under consideration.
- Members of the City Council will be asked whether they have any potential conflicts. If a Council member has an actual conflict, the Council member cannot participate.
- Council members must declare any contacts about this case with members of the public.
- Council members must also declare if they have independent knowledge of relevant facts such as from a visit to the site in question.
- A Council member who describes ex parte contacts or independent information may still participate in the decision.
- After the discussion of conflicts of interest and ex parte contacts, any person may challenge the impartiality of the City Council and may rebut the substance of the Council member's knowledge of the facts. The Council member in question may respond to the challenge.
- A copy of the rules of procedure for the hearing and copies of agendas for today's hearing are available at the entrance to the hearing room.
- The staff report for this item has been available for viewing and downloading on the City's website. A paper copy of the staff report has been available in the Tigard Public Library for the last seven days.
- Tonight, City staff will summarize the written staff report. Then the applicant and those in favor of the application will testify. After that, witnesses who oppose the application or who have questions or concerns may testify. If there is opposition or if there are questions, the applicant can respond. The Council members may also ask the staff and witnesses questions throughout the hearing until the record closes.
- After all testimony is taken, including any rebuttal, the applicant can make a closing statement.
- After the record is closed, the Council will deliberate about what to do with the application. During the deliberations, the Council may reopen the public portion of the hearing, if necessary, to receive additional evidence before making a decision.
- You must testify orally or in writing before the close of the public record to preserve your right to appeal the Council's decision to the Land Use Board of Appeals.
- Failure to raise an issue clearly enough so that the Council understands and can address the issue precludes an appeal on that issue.

- Failure to raise Constitutional or other issues related to proposed conditions of approval with sufficient specificity to allow a response precludes an action for damages in Circuit Court.
 - Please do not repeat testimony offered by yourself or earlier witnesses. If you agree with a statement of an earlier witness, please state that and add any additional points of your own.
 - You have the right to respond to new evidence presented at the hearing.
 - You may request that the hearing be continued or the record held open in order to respond to new evidence.
 - Demonstrations from the audience are prohibited. Please refrain from them. Comments from the audience will not be part of the record, so you need to make sure that any comments that you make are picked up on the tape at the desk at the front of the meeting room.
 - When you are called to testify, please come forward to the table. Please begin your testimony by giving your name. Please spell your last name and give your full mailing address, including zip code.
 - If you represent someone else, please say so. If you have any exhibits you want us to consider you must hand new exhibits to the City Recorder. The exhibits will be marked as part of the record. The City staff will keep exhibits until appeal opportunities expire, and then you can ask for them to be returned.
- c. Community Development Director Hendryx introduced the following staff members: Development Review Engineer McMillan, Planning Manager Bewersdorff, and Associate Planner Tracy.
- d. City Attorney Ramis asked the following questions:

Does any member of the Council wish to declare an actual or potential conflict of interest? None declared.

Does anyone wish to declare any ex parte communication? Mayor Dirksen declared he made a site visit last week for the purpose of observing the current condition of the site. Councilor Wilson and Councilor Harding also reported they visited the site. There were no challenges to any Council member's ability to participate in this decision.

- c. Staff Report:

Associate Planner Tracy listed the written testimony received by staff after the generation of the staff report, prior to this hearing:

- E-mail from Marilyn Ferrara (2/8/05)
- E-mail from Carol Paddock (2/8/05)
- Letter from Jim Labbe from the Portland Audubon Society (2/3/05)
- Kurahashi & Associates transmittal – Washington County Street Standards, submitted by John Frewing on February 4, 2005.

The above items were distributed to City Council.

Associate Planner Tracy advised that the subject of the public hearing was for consideration of additional findings to supplement the Council's prior approval of the Ash Creek Subdivision. The findings respond to four issues raised by the State Land Use Board of Appeals (LUBA). This matter before City Council is strictly limited to the four issues remanded by LUBA. The remainder of the decision has been approved. To the extent the material discussed tonight does not supplement or supersede the previous findings, those previous findings stand. An outline of the PowerPoint presentation to the Council is on file in the City Recorder's office.

Associate Planner Tracy gave an overview and background of the hearing process. This application is for a 29-lot subdivision submitted in the summer 2003. The applicant has proposed a planned development to cluster the home sites outside the drainage way, Ash Creek, and reduce front yard setbacks to limit the extent of disturbance to the area adjacent to the creek. In addition, a private street cul de sac was proposed to serve 23 units, and in order to use a private street serving more than six units, a planned development was required.

The Planning Commission heard this matter on July 7, 2003. After deliberating, the Commission voted 4 in favor, 4 opposed. As a result of a tie vote, the Commission Rules of Order stated that the application was denied. Since the application was denied without findings, the applicant appealed the decision to the City Council for its consideration.

Significant public testimony was received at its August 12, 2003, hearing, which caused it to be held over to September 9, 2003, and another hearing on October 28, 2003. Council ultimately approved the application with 51 conditions of approval on November 4, 2003. The application was appealed to LUBA on November 25, 2003. The appeal cited 25 errors and sub-errors in the decision. On August 20, 2004, LUBA issued their decision that 21 of the 25 errors were rejected, one was sustained and three others were sustained in part.

LUBA found that insufficient justification was provided for four issues. The four issues are:

1. The City's acceptance of a lower "K" value for the vertical sag on SW 74th Avenue. A "K" value is a mathematical expression of the severity of steepness of curve. It's an engineering term used to describe a tight curve. The lower the number, the tighter the curve. Typically roads designed for 25 mph speeds are required to have a minimum "K" value of 13.4 based on the City's design manual. The applicant in this case has proposed a curve of "K" value of just over 5. A design of the stream crossing of the conforming curve would negatively impact existing public facilities and natural resources. Below SW 74th Avenue right of way, the City of Tualatin has a 36-inch main water line, which is adjacent to the proposed crossing are the stream and wetland areas. The placement of significant additional fill would make maintaining the Tualatin main water line difficult and would also require a greater width of fill to maintain a maximum of 2:1 slope for each side of the road to support the road bed.

The City's street design manual was not intended to cover every type of situation and clearly states this in the preface of that document. The City Engineer may consider deviations of these standards based on topography and other existing physical conditions. These designs must conform to standards of engineering principles such as the American Association of the Society of Highway and Transportation Officials (AASHTO). AASHTO permits a minimum "K" value of 5 with a reduced 15 mph speed limit. In this case, staff agrees that the applicant's proposal to design the curve for a 15 mph speed will result in the closest conforming design with the least impact on existing physical conditions. Therefore, the City Engineer has accepted the modification with the condition that signage be placed on both sides of the curve advising drivers to slow to 15 mph through the curve and that the street be monitored for a year after its construction to determine whether any additional measures are needed. The cost of these measures will be borne by the applicant and a condition of approval is imposed to that effect.

2. Lack of a Tree Plan. There are four elements required. A Tree Plan was not initially required because it was the position of staff that parcels with timber deferral status were not required to have a Tree Plan since the timber deferral allows the owner to harvest trees for commercial purposes without a permit. LUBA, however, rejected this position and instructed the applicant to prepare and submit a Tree Plan.

The applicant had a surveyor and arborist inventory trees on the site greater than six inches in diameter. The Council received a copy of the Plan showing trees to be removed and trees to remain. The other elements of the Tree Plan include a tree removal plan, a tree protection program, and tree mitigation program. The Plan shows 893 total trees greater than 12 inches diameter; of those, 115 are deemed hazardous, 321 are proposed for removal and 457 viable trees are proposed for retention (about 59 percent of the total).

Based on a previous LUBA case, Miller vs. the City of Tigard, Tree Plans may no longer be adjusted in the field to account for site-specific issues. Subsequent changes require reapplication through a public-review process. As a result, applicants generally show the worst-case tree removal scenario to provide the greatest flexibility rather than show an optimistic plan that would back them into a corner later during construction. However, in light of this, to encourage the applicant to retain even more trees, staff has recommended a condition that will credit saved trees from the final mitigation calculation. In other words, if during construction, the applicant retains and protects healthy trees that were previously indicated for removal, these caliper inches will be credited back against the mitigation bond. To insure that the trees that are saved are protected after the homes are sold, staff required that deed restrictions be placed on each lot, restricting trees greater than 12 inches from being removed by property owners unless they are dead or hazardous.

3. Insufficient analysis to grant adjustments to cul de sac and planter strip requirements. In this case, the cul de sac was proposed to serve 23 units; the maximum allowed is 20 units. The length of the cul de sac is limited to 200 feet by the Code and the applicant's proposal was 570 feet. There is a requirement for a five-foot wide planter strip on public streets. The applicant was proposing a curb-tight sidewalk in the area on 74th Avenue where it crossed over the stream to reduce the street width. LUBA found that the City had addressed many, but not all of the criteria, for the requested adjustments. LUBA also noted the City had applied one set of adjustment criteria, generally for subdivisions in a general set of criteria instead of the more specific criteria for street improvement adjustments. To respond to this, the applicant has provided comprehensive planning for both sets of criteria and staff also searched the existing text as to what the Development Code would permit for tight sidewalks in light of the adjacent water resource without the need for an adjustment. These findings are

contained in the staff report, which was sent to the City Council in the packet material for this item.

Staff found that both the general and specific criteria for granting the adjustments are met and, therefore, did not recommend any additional conditions of approval for this particular issue.

4. Insufficient evidence to demonstrate that the landscape protection criteria are being met. The applicant's arborist's tree protection guidelines were submitted to the City Council in the Council meeting packet. The arborist, Terry Flanagan, is a certified arborist and provided a detailed program for tree protection measures. Development Code Chapter 18.745.030 E. provides that:

Existing vegetation on a site shall be protected as much as possible:

1. The developer shall provide methods for the protection of existing vegetation to remain during the construction process; and
2. The plants to be saved shall be noted on the landscape plans (e.g., areas not to be disturbed can be fenced, as in snow fencing which can be placed around individual trees.

The applicant's arborist report includes specific methods for protection of the trees on site. This includes protection fencing established around individual and groups of trees and under story vegetation in their critical root zone will also be protected by this fencing.

Clean Water Services also requires the drainage way be protected from encroachments as well. Staff proposed four additional conditions to address this issue:

1. Construction documents will include a construction sequence as well as the arborist's protection requirements including tree protection fencing around the critical root zones of the trees to be retained.
2. Regular monitoring of tree protection by the City Forester and regular status reports from the project arborist will be required every two weeks.

3. Failure to follow the Plan and maintain tree protection on the site shall be grounds for suspension of work until remediation steps are taken, including civil citations.
4. Each building permit will be required to submit site plans showing tree protection consistent with the overall tree protection plan, along with an approval from the project arborist approving the placement of the structure and construction techniques to be employed when building the house. The protection plan shall remain in place for the duration of home construction and may only be removed after approval by the City Forester.

Associate Planner Tracy reported that he has received many comments about the tree protection issue. Many in the public have expressed that the tree removal plan did not show enough trees being preserved. The applicant will need to speak to this. In light of the Miller vs. City of Tigard decision, the applicant is showing a worse-case scenario and the intention is (and the arborist report states) that as the homes are sited, the trees that are left on the lots will have homes built around them. An effort will be made to retain the largest number of trees on each lot.

Associate Planner Tracy said it was important to note that the findings contained in the staff report go into much greater detail than what has been presented in his summary. In consideration of the findings in the report and the testimony the City Council will receive, the City Council has several alternatives:

- The City Council may adopt staff's findings and conclusions as provided.
- Modify the findings based on the evidence received during this hearing process.
- Request additional evidence to support other findings.
- Decide the applicable criteria have not been met and prepare findings to deny the request.

d. Public Testimony

Mayor called for public testimony. Consensus of Council was for a three-minute time limit for individual testimony.

Proponents:

- o Dale Richards, 12655 SW North Dakota, Tigard, Oregon, testified as the owner of Winwood Construction Company. Mr. Chris Koback, 1300 SW 5th Avenue, Portland OR 97212, accompanied Mr. Richards and advised he was representing Mr. Richards and his company. Mr. Koback said that when LUBA came down with its decision, their reaction was to go to staff and say "tell us what you need us to do." Staff told the applicant what they wanted and the applicant has done it. All that was done with the City of Tigard staff is incorporated in the staff report and Mr. Koback urged the City Council to follow it.

Mr. Koback said there were two issues he wanted to address:

1. What is the impact on the wetlands if the 25 mph speed through the sag curve is maintained. Mr. Koback referred to two large drawings which show the impacts. These drawings were set up for City Council view and labeled as follows:

Exhibit 1 – Ash Creek Estates PD – 74th Avenue
Plan/Profile – Dale Richards, Winwood
Homes – Sheet 1 of 2

Exhibit 2 – Ash Creek Estates PD – 74th Avenue
Plan/Profile – Dale Richards, Winwood
Homes – Sheet 2 of 2

Mr. Koback described the drawings. One drawing showed the amount impact if the 15 mph modification is applied. Less fill will be needed. If the 25 mph speed was adhered, the other drawing showed that significantly more fill would have to be used, which would have additional impact on the wetland and stream. The drawings were presented to supplement the staff report to illustrate what the applicant was trying to avoid by working with the City Engineer to modify the standards. Mr. Koback said he understands the City of Tigard standards are based on the Washington County standards, which allows the 15 mph speed.

2. The Tree Plan submitted is a worse-case scenario. Mr. Richards has the bond for mitigation and every incentive to avoid cutting trees. The worse-case scenario was done because of the Miller case and the applicant would not want to come back through a public process for a modification if he wanted to cut more trees. This way, there is incentive built in so that if a tree does not have to be cut, there will be a direct

economic impact on Mr. Richards and his development company. The goal is to cut as few trees as possible.

In response to a question from Councilor Wilson, Mr. Koback pointed out the location of the Tualatin water line.

- o Gregory Kurahashi, Kurahashi & Associates, 15580 SW Jay Street, Beaverton, Oregon 97006, pointed to the location of two water lines. One of major concern is a 36-inch water line, which is the main feed for the City of Tualatin. Mr. Kurahashi described the location of the water line. In response to a question from Councilor Wilson, Mr. Kurahashi said there was a vertical exaggeration as shown on the drawing.

Councilor Harding commented that the K value would only stand up if the traffic if, in fact, is maintained at 15 mph in that dip. Mr. Kurahashi responded that the K value was developed based on ability to see without headlights. On a crest vertical curve, you cannot see anything past a certain point, because the headlights do not shine on it. On a sag vertical curve you can see things if there are street lights. Mr. Kurahashi referred to the Washington County documentation sent to the Council. This documentation says "you can even go lower than the 5 at a 15 mph limit. It's really related to the fact that you will not be able to see it without lights. So, since there will be street lights...you can actually go lower than the 5 at a 15 mph speed limit." Councilor Harding responded, "That's if 15 is maintained, am I correct...if it's higher than, then that would affect the K value, right?" Mr. Kurahashi confirmed that the K value is based on a speed of 15 mph or less, but it wouldn't necessarily pose a safety problem at more than 15 mph.

Mr. Koback said that, while they hoped everyone would travel at 15 mph, the City Engineer made a recommendation to monitor this and if it's not working, the City Engineer has retained the authority under that condition to require something else. It might be necessary, in the future, to have additional signs including a stop sign to make sure people slow down at that point.

Councilor Harding noted during a site visit to SW 74th, she saw a sign that said to slow down – children playing. From this, she got the sense that speeding at this location is already an issue. She noted her concern that the 15 mph limit be enforced from the beginning. Mr. Koback noted that this would be monitored and if there is a problem, then some adjustments will be made in accordance with the City Engineer's recommendations.

- o Walt Senn, 13323 Meridian Avenue, North, Marysville, Washington 98271 testified that his mother owns the property under consideration. He said he spoke to the Council over a year ago on this same issue. He said could not really add anything to the four remaining issues, but, as he mentioned before, his parents bought this property in 1950. His mother will be turning 90 years old in April and this has been going on too long. He said someone ought to be able to sell their property if they want to under certain restrictions. Mr. Senn noted the Council approved this development over a year ago and "because we have some people in the neighborhood that don't want the development...their property was developed someplace along the line...would they like to just take their property and their house down and start over? I think it's immoral what these people are putting my mother through. She should have been able to have sold this property years ago, but because we have some tree huggers in the area that don't want to see this developed...they'll do anything they can to stop it. I just think that they have put her through enough. She ought to be able to sell her property and do something with the money. Again, she's almost 90 years old and she would like to sell the property and have some enjoyment out of it. I can't add anything to the four issues that are up there except that I urge you to pass this and let's get on with it."
- o Connie Coleman, 9750 SW 74th Avenue, Tigard, OR 97223, advised Mr. Senn is her brother. She said that there is some information she wanted to relay to the neighbors, which is pertinent to the issue of retaining trees. Ms. Coleman said that her mother, as the neighbors will recall, had been approached by Metro to purchase the property. She was in favor selling it to Metro because she did want the trees to be kept in the neighborhood. Metro made a deal with her mother on a Friday evening. Metro personnel spoke with Ms. Coleman on a Sunday and confirmed that "it'll be a deal...the City of Tigard will not have to be involved...." On Monday morning, Metro representatives called Ms. Coleman and cancelled the deal to purchase the property. Ms. Coleman said her mother then found a builder who would retain the trees and construct nice homes. Ms. Coleman said she thought from earlier testimony the neighbors should know what exactly had transpired so they could look at this more positively – her mother is not trying to destroy the neighborhood, she's trying to retain the trees.

In response to a question from Councilor Woodruff, Ms. Coleman said she did not know why Metro pulled out of the deal. She said

at first it was to be 75 percent Metro money and 25 percent City of Tigard money/sewer money. The Metro person she talked to on a Friday told her it looked as if the deal could be put together without City of Tigard. When she was contacted the following Monday, Metro did not tell her why they would not pursue. Ms. Coleman said she thinks the neighborhood has a lot of misconceptions as to what had happened and if the neighbors have issues, then they should talk to Metro, rather than take issue with her mother.

In response to a question from Mayor Dirksen, Community Development Director Hendryx advised that the Metro effort to purchase the property took place a couple of years ago. Mr. William Edy of Metro was involved. City of Tigard staff worked with Clean Water Services and Metro to determine if there was a method for purchase of the property, but due to the limitations on funding, the purchase was not possible.

- Karen Schuster, 2720 NE 85th Circle, Vancouver, WA 98665, advised Ms. Coleman is her sister. She referred to the four issues under consideration at this hearing and said she wanted to say again that the family has owned the property since approximately 1950 and they are concerned about the Tigard community. She said "We, too, are taking care of the community. And, as Connie indicated, we did our utmost to work with the preservation of the property as it is and it was to no where. Looking at the best possible option for everybody sitting here...everybody sitting here in this room most likely is living in a home that was built on property that at one time had trees, was before rules and regulations with environment.... And, now my mother, she'll be 90 on April 12 ...is asking for the opportunity for what others have done in the same scenario while at the same time preserving this gorgeous piece of property that will be an asset to the community, because we are taking care of the community by this approach with Mr. Richards. He is a very responsible builder. He has a tree mitigation plan firmly in place. We are willing to work with the community and offer not only an income source, but a beautification to the City and I think that's very, very key. There is a large open area on the property...we are looking at 59 percent of trees going to be retained..." She said the best option for the community would be to allow Mr. Richards to develop this property; he has the plans and the know-how.

Opponents:

- o John Frewing, 7110 SW Lola Lane, Tigard, OR 97223 advised he had prepared testimony but to begin, he said he wanted to look at new evidence offered by the applicant. He said he wanted to have time to study and comment on it. City Attorney Ramis affirmed that Mr. Frewing could delay his testimony until he had an opportunity to inspect.

Mayor Dirksen proceeded to others signed in to give testimony to allow Mr. Frewing an opportunity to review Exhibits 1 and 2 submitted by the applicant as noted above.

- o Ned Lesnick 7140 SW Lola Lane, Tigard, OR 97223 signed in to speak, but did not come forward to testify.
- o Marilyn Ferrara, 7140 SW Lola Lane, Tigard, OR 97223 signed in to speak, but did not come forward to testify.
- o William Iron, 9780 SW Ventura Court, Tigard, OR signed in to speak, but did not come forward to testify.
- o Bob Storer, 7225 SW Ventura Drive, Tigard, OR asked if it was possible to yield his time to John Frewing. Mayor indicated this would be acceptable. Mr. Storer's written testimony was submitted to the City Recorder.
- o Ron Ellis Gaut, 10947 SW Chateau Lane, Tigard, OR said two Council goals related to this issue. He saw an opportunity to work toward a creative solution for a Council goal to acquire park space. He said it was possible that this might still be an option. The Council, based on the LUBA decision, could decide to disapprove the development and then actively engage with the property owners to provide them with a financial return on the sale of the property with the acquisition of the property for park space. He urged the City Council to consider whether planned developments really should be of mutual benefit for both the property owners and the people of Tigard who have to live with the results of planned developments. He said it was an option for the City Council to deny this application. He asked for the City Council to strive for a true "win/win" solution for the people of Tigard and the Sim's.
- o Sue Bielke, 11755 SW 114th Place, Tigard, OR 97223, noted she had a lot of concerns with this development. An outline of some her remarks as well as two photographs are on file with the City Recorder. City Council members viewed the photographs during Ms. Bielke's testimony. She referred to her review of some of the

past planned developments. The plan under consideration had originally been showing a complete clear cut and saving of few trees. She noted the site has extensive wetlands, a creek, steep slopes, numerous drainage problems, and slumping. She said "it just can't be done." Ms. Bielke said she looked at many other developments in Portland and has seen developments in Portland where a clear cut of trees has occurred to construct the number of houses that were wanted to be built. When this happens (referring to a site on Mt. Scott), remaining trees die because the hydrology has been changed so greatly. Ms. Bielke asserted that when you come into an area such as this to put in a long cul de sac and homes with the clear cut, you cannot sustain this kind of development. She urged the City Council to think about these problems.

Ms. Bielke said similar problems have occurred on Bull Mountain where the City has had to come back after all the development is done under the CIP process and "we have had to pay for it, not the developer, but us." This costs the City thousands of dollars. She urged the City Council to think about this, "because we are going to run into the same problems."

She noted that Ash Creek runs through the site. Other subdivisions are being built "and this creek is being hit really hard." She asked the City Council to think about the whole purpose of the Planned Development Code to preserve to the greatest extent possible the existing landscape features and amenities through the use of planning procedures that can relate the type and design of a development to a particular site. She said the current plan does not make this possible. She said the application does not meet the Code. The purpose of the Code is to make sure that what you do meets this and if you are going to design an area, you want to make sure that all of the details "are going to end up with that end result" and that can't happen.

Ms. Bielke referred to Tigard Municipal Code (TMC) 18.745.030, regarding the Tree Plan. The application does not meet the requirements of the Code. She cited TMC 18.790 and said in a conversation last year with Colin MacLaren of Clean Water Services and he pointed out that the developer did not have permission to remove 74 trees from the sensitive lands area. She said this needs to be addressed because, as far as she knows, this has not been approved by Clean Water Services.

Ms. Bielke said she spoke to someone at Three Rivers Land Conservancy who tried to work with the Sims, Metro Parks and

Greenspaces to purchase this site a number of years ago. Ms. Bielke said she also talked to Metro. She confirmed that Metro did try to purchase the site. The problem was that the City of Tigard said it did not have adequate funds, so the deal fell through. She understands the Senns' position and she said "we are not quote "tree huggers"; we truly care about the land, the neighbors, and the people that own that the site. So, my proposal is Council to think about this site. If you've looked at it, it's one of the most unique sites in Tigard left and that is why we would like to have it purchased as an open space, as a parcel, as an actual resource that the entire City can enjoy." She said if the development goes through, the open space will not be open to the public, but just available to the people that live in the development and that is not a good thing.

Councilor Woodruff asked staff if it was their understanding that there are 74 trees that are to be removed from sensitive lands and there has not been approval for this from Clean Water Services? Associate Planner Tracy said there were areas on the original tree removal plan that indicated trees were to be removed from steep slope areas, which were considered part of the sensitive lands. He said does not believe that Clean Water Services regulates steep slopes. There are also trees within the area of the stream crossing where the road is being constructed that would be removed. Associate Planner Tracy said from his recollection CWS approved the stream crossing. He said CWS does not get to the specific level of approving or not allowing the tree removal.

- Alice Ellis Gaut, 10947 SW Chateau Lane, Tigard, OR 97224, said she has never heard anyone vilify Mrs. Senn for trying to sell the property and no one feels that this is something she should not have done. The dispute is really how the property is being developed. A Planned Development, historically has a different philosophical underpinning than a subdivision and it contemplates a quid quo pro and that quid quo pro was essentially expressed "as the ability to grant flexibility in exchange for having a superior living arrangement...and require Planned Developments preserve, to the greatest extent possible existing landscape features and amenities." She said "we encourage development that recognizes the relationship between buildings, use of open space and access ways. The Senn property has long been recognized as one of the highest quality natural areas in Tigard and this value should figure prominently in your deliberations, especially as to the landscape preservation and the tree removal and protection and mitigation section. Tree mitigation, as we know, can require both onsite and offsite. And, we are looking at

this site, as three of you did, and when you look at the tree plans, particularly, the succession of tree plans that have been submitted for this project over the last several months, notwithstanding the fact that the Miller decision has encouraged the developer to overstate the need to remove trees, when you look at where those trees are targeted for removal, and these are mature trees, they are very, very close to that steep slope. And, my view to allow that condition, that tree plan to pass muster would be to endorse a needless degradation of this resource."

Ms. Ellis-Gaut said, "As Mr. Ramis emphasized backstage before the show this evening, in the nice presentation he gave about the land use statutes, in the Planned Development context, because that flexibility is inherent in making it work at all, you have the discretion to tailor the conditions according to your assessment of the facts, the issues... As you Mr. Mayor and Councilors Wilson and Sherwood will recall, from personal experience, there are many citizens both adjacent to this development and citywide who have said plainly for nearly two years that we would really like to see this natural area protected. That is the quid we are requesting for the quo's that have already been granted. You have an opportunity to redirect and realign that relationship and a second chance. Please fashion a solution that works for Tigard citizens and honors our duty as a community to protect our environment from tragic and irrevocable loss."

- Brian Kelly, 7045 SW Ventura Drive, Tigard, OR, testified that most of his concerns had been covered. He asked the City Engineer if a mitigation plan had been included. Associate Planner Tracy said the mitigation plan does not include a landscape plan specifying where trees are going to be planted. The plan is more of a statement, rather than a drawing. Mr. Kelly said his concern was that there are numerous locations where trees down the slope are slated for removal. In many areas there seems to be a good compromise to try not to remove trees, but was concerned about other areas. He noted the steep hill and advised of his concern with erosion of the hillside and the condition of the stream. He said he hoped that controls would be put in place that would be adequate.
- John Frewing, 7110 SW Lola Lane, Tigard, OR 97223 advised he was not ready to testify. He looked at the exhibits and he has 16 comments, some big and some small. He asked that the record be left open for seven days.

Mr. Frewing said he would like to integrate his new comments with written comments. He noted he has 20 pages of written comments plus some handouts for the Council. He said, however, that he would only give one comment to the Council this evening and said, "Regardless of your deliberations and decision on the seven-day extension in order to comment on this new evidence, I would like to integrate these comments, the new evidence comments, with my comments and give the balance to them at a later time. Let me give you the one comment that I think that is both simple and clear. A general theme throughout the 60-some comments is that you've been given a very varnished product by staff and by the applicant that has all kinds of warts hidden underneath it. And, I've got a number of examples...I only want to show you one right now...The applicant's lawyer rests his case on use Washington County and State of Oregon standards for street design. The Oregon standards do not exist as evidence in this proceeding, and they apply for many different settings than only a city. I believe they are irrelevant to this case. The Washington County standards are of limited applicability because they cover a very large rural area with small roads, quite different from the urban setting of Tigard. However, only in your packet because I gave it to Morgan the other day, is a copy of the Washington County standards, which Greg Kurahashi transmitted on 11/15/04 to the City saying that Chris wanted it. I presume that refers to Mr. Koback. Clearly stated at the bottom of Page 27 on those Washington County standards...talking about, well, there's some flexibility, but in no case shall the design speed for the alternative designs be less than 20 mph for local roads and 15 mph for alleys. 74th, in this case is not an alley. It's a local road. I think it was called residential in the Tigard terminology. It's classified as a Neighborhood Route, a local street, on the City of Tigard Transportation Plan, and that is documented in the record of the prior hearing at Page 84. Hence, there is explicit guidance at the County level that the proposed vertical sag curve is too sharp and violates their standards as well as those of Tigard. So, that's my one comment and I would like the opportunity to submit these comments when I integrate this material. I presume I'll be able to look at this material at City offices in the coming days." Mr. Ramis confirmed that the exhibits would be available.

Councilor Wilson said he thought he heard AASHTO as the standard. Mr. Frewing said that AASHTO is a national organization that writes standards and cities, counties, and states pick up what they want out of them. In the case of Tigard, "Tigard has picked up this business about 25 mph speed limits for local

streets. That's also a general state standard. There are deviations allowed. I can tell you in the case of Washington County their general standard is also 25 mph, but they allow some deviations down to 20 for streets and down to 15 for alleys. This is main through-street on the Tigard Transportation Plan and should be considered as such."

Councilor Wilson asked if Mr. Frewing would prefer to see the grade raised 13 feet, placing more fill into the creek? Mr. Frewing said he would prefer adherence to the design for a 25 mph street and place a bridge across South Fork/Ash Creek.

Councilor Sherwood referred asked for clarification on Mr. Frewing's position about a bridge vs. a culvert. Mr. Frewing said the Oregon Department of Fish and Wildlife provides specific guidance with regard to protecting riparian and stream habitat and bridges are preferred over culverts. He said he believed it was true that in order to protect this particular habitat on this stream a bridge is better than a culvert. The Tigard Trail Plan shows an Ash Creek Trail (not yet developed). Mr. Frewing said he thought the plans were to buy, in the next year, some land at the bottom of Ash Creek. He said it was his hope that the Ash Creek Trail would work its way up to this point. He said the extended piece of greenway along here provides a wonderful opportunity for Tigard to have some more open space, which is one of the Council's goals for the next year.

Mr. Frewing said, "I overheard some comment about buying the property, both from the Senn ladies and an earlier testifier here. And, it's my knowledge, my personal knowledge, that Mr. Richards told me on August 12, '03...which was a hearing before the City Council...that he had offered the natural area, the drainage way, the buffer zone to the City for free and the City turned it down. Now, this is some four acres of greenway for the City and I then asked...Dan Plaza if that were true and he said yes. He said he referred it to his boss, his supervisor, and never heard back and nothing ever came of it...I admire you guys for trying to take charge of the City. It's a big job. I don't demean it at all. But, you're not getting the full story. Ask, inquire to staff, find out what happened to that offer, why was it turned down? I think there's an opportunity here to make something good for Tigard...to make Tigard great, we've got to do some good things. This is a tremendous asset for this part of Tigard. The closest park for the people who live nearby is Victory Park down at Main Street and Highway 99W; that's not exactly neighborhood."

- o William C. Iron, 9780 SW Ventura Court, Tigard, OR spoke at this time (signed in earlier). Mr. Iron said he supported Mr. Frewing's comments 100 percent.

Rebuttal

- o Mr. Koback said they would not consent to any extensions. He said he interpreted the Oregon State Statute to require an extension after the first evidentiary hearing and this is not that. He said there was no entitlement to an extension and they oppose it because this has dragged on long enough.

Mr. Koback commented about the testimony about the purposes of a PUD and preserving trees to the extent possible. He reminded the City Council that those issues were decided by LUBA in favor of the applicant, upholding the City's findings. They are not an issue on remand.

Mr. Koback referred to a comment about clear cutting of the site. He said he did not think there was any evidence in the record to support the notion that this site is being clear cut. 59% of the mature trees are being preserved. The tree plan complies with the Code and staff has told City Council that the Code does not require that all of the shrubs be shown. The tree plan may show some trees being removed and he did not think they were all on slopes. The only trees being removed on the tree plan are for when it's necessary for the street improvements. Also, if trees are dead or decaying, the trees will be removed – that determination will be made by the arborist. There is no plan to remove trees for the sake of removing trees.

Mr. Koback said Mr. Frewing made a couple of points that need to be rebutted. The design speed of less than 25 mph will be addressed by Mr. Kurahashi. It was Mr. Koback's understanding that Washington County does say that you shouldn't design streets for less than 25 mph. Mr. Koback said they are not proposing that at all. The street is designed at 25 mph; there's just a narrow area where they were asking for a modification for the very reason that Councilor Wilson asked the question. The impacts to the wetland are significant if they don't. So, they were not proposing a design of 20 mph or less on any street; they were just asking for a modification for an exception in one area and the facts warrant it. Mr. Koback said that a bridge over this area was discussed and was mentioned in the staff report. If there was a bridge constructed and the water line failed under the street, the bridge would have to be removed to fix the water line – it would

make fixing the water line a significant issue. If the water line is under a limited amount of fill, it can be fixed by digging a trench, which would be a less costly way for repair. This is why a bridge was not pursued.

Mr. Koback said, "my last comment goes to who Dale Richards is and what he is all about. He did offer to give the wetlands – the area that wasn't being developed – I think it was about five acres to the City for a park. I think that's a generous offer. Developers don't have to do that. He did it because he wants the use of the property as a developer and he's not shy about that, but to the extent he can give back to the City, he is willing to do it. He's a responsible developer and I think the plans and the staff report that you have show that. So, we would ask that you adhere to your staff report, the recommendations, and approve the development based on the findings that are contained in the staff report."

- Greg Kurahashi referred to the discussion of the water line vs. the bridge. He said he has taken the issue and argument to the DSL and the Corps of Engineers, explaining why the applicant wants to do a fill rather than a bridge. He noted it is difficult to maintain a 36-inch waterline. It's also difficult to cross an area that is a natural area. One of the reasons water lines are placed in public streets is because they are hard to maintain. Water lines need to be monitored to avoid problems. In his talks with DSL and the Corps, he explained why they wanted a culvert rather than a bridge in this area: issues of maintenance, safety, and what would happen if there was a failure. DSL and the Corps agreed with Mr. Kurahashi about the culvert rather than a bridge. They allowed it also because it was a short culvert. He talked about the amount of fill and the requirements for the culvert. He also talked about how the project was designed to help with maintenance of the water line. Mr. Kurahashi noted the impacts to the wetland and trees that would have to be removed for the culvert.

Mr. Kurahashi addressed the issues regarding the speed limit and said the proposed modifications are allowed all of the time because of local conditions. He noted that there are many areas in other jurisdictions and in Tigard that cannot meet the standards. In this case, there is a house with a steep slope and the street cannot be lowered. The water line is also an issue with regard to its ability to withstand the weight of the load by more fill that would be needed for a road.

Mr. Kurahashi addressed the issues regarding vertical curves. Washington County allows what the applicant is requesting. There are 15 mph locations allowed under certain conditions.

Mr. Kurahashi addressed issues involving trees. He said he was not sure where 74 trees were missed. It could be trees being removed for fill or some misunderstanding about how they relate to the overall area in the wetlands, sensitive areas, and slopes. All trees on the banks are being saved. He said hazardous trees would be cut.

Councilor Harding noted information she read that said the bridge was much too expensive to construct. She said she would like to review this more closely.

- e. Staff Recommendation – Associate Planner Tracy said staff is recommending that City Council direct staff to prepare a final order for Council's next meeting to adopt the additional findings in support of the approval for the Ash Creek Estates Planned Development.

City Attorney Ramis made a procedural suggestion. Whatever the statute may say about automatic continuances, it is within the City Council's discretion to decide how to handle these requests. One possibility that would still allow the City Council to decide the case by the March 13 deadline would be to:

1. Close the public hearing in terms of oral testimony at this time.
2. Continue the matter for deliberation until the City Council hearing on February 22.
3. Allow the parties to submit argument and evidence in writing on the following schedule:

Allow opponents' written evidence and testimony to be submitted until Monday, February 14.

Allow applicant to respond with any written evidence, written argument and final summation until Monday, February 21.

City Council would take the matter up for deliberation on February 22.

The difficulty with the above schedule is that the City Council would have only one day to review the information that would come in from the applicant.

Mayor Dirksen asked City Attorney Ramis that if anyone requests a delay, then the City Council must grant it? City Attorney Ramis said, "No, that's not the case." Mr. Ramis referred to the law at the evidentiary hearing. He said that, in fairness, when new evidence comes in the City Council should create an opportunity for people to respond. The argument being made by the applicant is that the automatic continuance is not available, because this is not the initial evidentiary hearing. Mr. Ramis said he is not aware of a case that tells how this statute is to be applied when there is a remand. There has been a revised application. Mr. Ramis said that the safest course would be to allow the parties who want to provide additional evidence to do so to avoid additional debate about the entitlement to do that. Mr. Ramis said he understands the deadline to decide this case is March 13, 2005, unless there were to be an extension.

Councilor Wilson said that while he would prefer to make a decision tonight, he would support the extension to assure adherence to procedural requirements.

Councilor Sherwood noted she agreed with Councilor Wilson.

Councilor Woodruff said, at the same time, he wanted to be sensitive to the concerns by the owners and the developers about the length of the delay that has already occurred. He supported the delay so the conclusion that is made is the final conclusion.

Councilor Wilson said that this has been a long process and noted that very little that was said to the Council at this hearing dealt with the four issues on remand. He said the greatest concerns were for the trees. He referred to the issues of the curb-tight sidewalk and landscaping, and the issue that came back to the City Council on a technicality with regard to the trees. Councilor Wilson noted that because this was a registered tree lot, the owner had the right to harvest the trees on a portion of the site that was not in the sensitive lands area. The determination was made that if the owner was allowed to harvest the trees, then the owner would not be required to submit a tree protection plan for that portion of the site. LUBA remanded the decision to City Council because the City of Tigard Development Code requires a tree plan regardless of whether there is a tree removal permit or not. The applicant has returned with a tree removal plan as

required. If the record is to be left open, he said he hoped that the additional evidence submitted would relate to those points on remand.

Mayor Dirksen said that the City Council is limited to making a decision on the four issues on remand. The City Council is not allowed to consider any other issue.

Councilor Wilson added that "purchasing a park is just not on the table. It's not something we are being asked to consider here. This is a development process...the owner has certain rights and, among those, is the right to develop his property in accordance with the rules. So, the only question is, 'Is this according to the rules or not?'"

Councilor Woodruff noted there were 58 conditions that were submitted along with this approval, and there were only four them that were sent back to the City Council with concerns. Two Councilors – Councilor Harding and Councilor Woodruff – were not on the City Council when this came up for discussion. Some of the discussion tonight would have been relevant at the beginning of the process and, perhaps, the outcome would have been different. He said, "But, we cannot go back and change history. The Council had approved this request with those conditions, four of them have come back. And, we have to see what we are going to do about those four. I think that's the only thing we can focus on regardless of what our personal feelings are about this and our desire to have more parks and open space..."

Mayor Dirksen summarized that what he heard was a consensus of Council to continue this matter until February 22. City Attorney Ramis asked that the parties follow the schedule he suggested earlier in terms of written suggestions. Community Development Director Hendryx asked that in order to give City Council sufficient time to review all the material, does the applicant need seven days to provide a response? After discussion with the applicant's representative, Mr. Koback, it was determined that the applicant would respond to the City Council in writing by facsimile transmission by Friday, February 18, 4 p.m. and this information will be forwarded to the City Council on Friday.

9. COUNCIL LIAISON REPORTS: None

10. NON AGENDA ITEMS: None

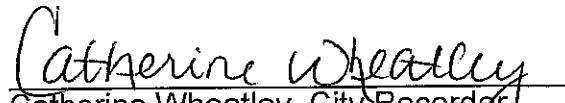
11. EXECUTIVE SESSION: Not held.

12. ADJOURNMENT: Motion by Councilor Woodruff, seconded by Councilor Harding, to adjourn the meeting.

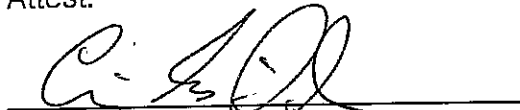
The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Harding:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

The meeting was adjourned at 10:14 p.m.


Catherine Wheatley, City Recorder

Attest:


Mayor, City of Tigard

Date: 3.22.05
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